

Appl. No. 10/697,225
Docket No. 9396L
Amdt. dated October 6, 2006
Reply to Office Action mailed on July 7, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1 - 25 are pending in the present application. Claims 1-6, and 13-25 were previously withdrawn subsequent to an election requirement. These withdrawn claims are canceled by this amendment. The abstract is objected to as exceeding 150 words. Claims 7-12 are rejected under 35 U.S.C. § 103. Claim 7 is provisionally rejected under the judicially created doctrine of obviousness type double patenting.

Claims 7 has been amended to more particularly point out aspects of the visible highlighting. Support for the amendment is found at page 8, lines 15-20, and page 13, lines 15-20. These changes do not involve any introduction of new matter.

Objections to the Specification

The abstract of the disclosure is objected to for supposedly exceeding 150 words. The abstract is exactly 150 words. Therefore, this objection should be withdrawn.

Rejection Under 35 USC §103 Over Underhill et al. in view of Neading et al.

Claim 7 has been rejected under 35 U.S.C. § 103 over Underhill et al. (US 2003/0114821) in view of Neading et al. (US 2001/0049513). This rejection is traversed.

The Underhill et al. document is characterized in the office action as teaching all elements of Claim 7 except for the visible highlighting. This reading of the Underhill et al. document is expressly not agreed with or acquiesced to. Nevertheless, even assuming the propriety of this reading of Underhill et al., both the proposed combination with Neading et al. and the resulting article do not meet the requirements of a *prima facie* case of obviousness.

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Neading et al. is taken as teaching a visible highlighting 14 indicating a presence of the wetness sensation member 16 in the disposable absorbent article and being visible at least when viewing the body-facing surface of the topsheet. (Office Action, page 4 citing Neading et al. p. 2 [0026, 0027]). The Office Action goes on to find that Neading et al. expresses the desire and motivation for a **wetness indicator** to indicate a visible response in the presence of fluid thereby indicating that the diaper is wet. It is clear from both the cited portion of Neading and the Office Action's own description of it that Neading et al. is about providing a visually based wetness indicator. Additionally, Neading makes clear (see, e.g. Para. 0020) that the wetness indicator elicits a visible response, such as a color change **in the presence of fluid**. There is no teaching in Neading that the visible highlighting of amended Claim 7 is visible **while the article is still in the dry state**. Additionally, there is no teaching in Neading that the visible highlighting remains substantially unchanged **after wetting of the article**. In other words, Neading is truly a visually based **wetness indicator**.

By contrast, Amended Claim 7 makes clear the claimed visible highlighting identifies the presence of the wetness sensation member **independently of its having been wetted**. In other words the structure of the claimed visible highlighting allows it to serve as an indicator of the flow control member functionality both **before and after wetting of the article**. Neither Neading nor Underhill teach or disclosure such structure of functionality.

Claim 7 makes clear that the wetness sensation member works by providing a physical sensation of wetness to the skin of the wearer. This is clear by the structural recitation of the various permeable and flow control portions of the respective layers and by the claim elements directed to retarding fluid passage such that the wearer's awareness of urination is enhanced. The awareness of urination is directly tied to the control of **fluid penetration** not a visible wetness indicator in contrast to Neading et al.

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Combining the wetness indicator of Neading et al. to the article of Underhill et al. would result in an article with both a feel wet indicator and a visual wetness indicator which undergoes a visible change **when wetted**. It would not result in the claimed article with a feel wet indicating capability where the feel wet indicator member is provided with visible highlighting in **both the wet and dry state**. For at least all of the above reasons, a proper *prima facie* case of obviousness with respect to Amended Claim 7 has not been established and the rejection of this claim should be withdrawn.

Rejections Under 35 USC §103 Over Underhill et al. in view of Neading et al. in further view of Roe et al.

Claims 8-12 have been rejected under 35 U.S.C. § 103 over Underhill et al. in view of Neading et al. and further in view of Roe et al. (US 6,627,786). These rejections are traversed. Claims 8-12 all depend from Amended Claim 7. The rejections of these claims in the Office Action all proceed from the base rejection of Amended Claim 7 as discussed above. The addition of the Roe et al. patent, even if proper in the first instance does nothing to cure the deficiencies noted above with respect to the rejection of Amended Claim 7. Roe et al. is added for teachings about the structural aspects of the wetness sensation member including, for example, spacing sizing, and Z-folding. None of this teaching, however, addresses the failure of the applied references to teach, alone or in combination, the claimed combination of wetness sensation member having the visible highlighting claimed and described above. As such, a proper *prima facie* case of obviousness with respect to Claims 8-12 has not been established and these rejections should be withdrawn.

Provisional Double Patenting Rejection

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness type double patenting over Claims 1 and 6-8 of Application No. 10/815,918. The Office Action notes that the Applicants' last response did not address this rejection on the merits. The Office Action goes on to state that the Applicant should submit an argument under the "Remarks" heading addressing such rejections. The Applicant continues to decline to address this rejection on the merits due to its provisional nature.

The Applicants are aware of no authority for the proposition that provisional rejections must be addressed prior to such time as they become non-provisional. The

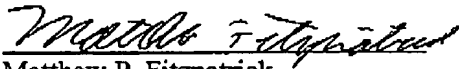
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instant application was filed on October 30, 2003. Application No. 10/815,918 was filed on April 1, 2004. Therefore, the instant application is the earlier filed application. According to MPEP 804.I.B.1 if a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, the examiner should withdraw that rejection and permit the earlier-filed application to issue without a terminal disclaimer. Therefore, given this guidance, the Applicants decline to address the ODP rejections on the merits unless and until potentially conflicting claims are in fact patented.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the objections and rejection under 35 USC § 103. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

By 
Matthew P. Fitzpatrick
Registration No. 41,751
(513) 634-4287

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